

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to the universal service fund mechanism established in NUSF-26.)	Application No. NUSF-50
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In the Matter of the Commission, on its own motion, seeking to determine the level of the fund necessary to carry out the Nebraska Telecommunications Universal Service Fund Act.)	Application No. NUSF-4
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**DIRECT TESTIMONY OF MIKE HYBL
ON BEHALF OF THE RURAL INDEPENDENT COMPANIES**

I. INTRODUCTION - WITNESS BACKGROUND.

Q. PLEASE STATE YOUR NAME, EMPLOYER, BUSINESS ADDRESS AND TELEPHONE NUMBER.

A. My name is Mike Hybl. I am employed by Consortia Consulting f/k/a TELEC Consulting Resources, Inc. My business address is 233 South 13th Street, Suite 1225, Lincoln, Nebraska 68508. My business telephone number is (402) 441-4315.

Q. ON WHOSE BEHALF ARE YOU TESTIFYING?

A. I am testifying on behalf of the Nebraska Rural Independent Telephone Companies (to be referred to as the "Companies").¹ The Companies provide local exchange and exchange access services predominantly in the more rural parts of Nebraska.

Q. WHAT IS YOUR CURRENT POSITION AND RESPONSIBILITIES?

A. I am the Director for Government Relations for Consortia Consulting by TELEC f/k/a TELEC Consulting Resources, Inc. In that capacity I provide legislative and regulatory advocacy support for a number of clients, including the Rural Independent Companies.

¹ The Companies are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

1 Q. WHAT WAS YOUR PROFESSIONAL EXPERIENCE PRIOR TO YOUR CURRENT
2 POSITION?
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4 A. I have held my current position since June 2004. Prior to that I served as President of the
5 Nebraska Trucking Association for two years. Prior to that I was the Director of
6 Government Relations for Great Plains Communications for five years. Prior to that
7 experience I served as a legal counsel to the Nebraska Legislature for 18 years, including
8 11 years as Legal Counsel to the Committee on Transportation and Telecommunications
9 and four years as Legal Counsel to the Speaker of the Legislature.
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11 Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?
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13 A. I have a law degree from the University of Nebraska and an undergraduate degree from
14 the University of Nebraska- Lincoln.
15

16 II. PURPOSE OF THIS TESTIMONY 17

18 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?
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20 A. The purpose of my testimony is to discuss the implications of Initiative 423, the so-called
21 Stop Over Spending Nebraska Initiative Petition and the ramifications that Initiative 423
22 could have for the Nebraska Telecommunications Universal Service Fund ("NTUSF")
23 should it be adopted by the Nebraska voters at the November 7, 2006 state general
24 election.
25

26 III. DESCRIPTION OF INITIATIVE 423 AND ITS IMPLICATIONS 27

28 Q. PLEASE BRIEFLY DESCRIBE THE BACKGROUND AND THE PURPOSE OF
29 INITIATIVE 423.
30

31 A. Initiative 423 is a proposed amendment to the Nebraska Constitution that is sponsored by
32 Mr. Mike Groene of North Platte, Nebraska and Americans for Limited Government of
33 Glenview, Illinois. The petition campaign generated 123,000 valid signatures for the
34 proposed initiative and on Friday, September 15, 2006 the Nebraska Secretary of State
35 formally certified the initiative to the November 7, 2006 general election ballot as
36 Initiative 423. If adopted, Initiative 423 would generally limit state spending to a
37 calculation based upon previous appropriations, population growth and the inflation rate.
38 The Legislature would be authorized to seek voter approval of spending in excess of the
39 imposed limitation, and the limitation could be exceeded by a three-fourths vote of the
40 Legislature in a declared emergency situation.
41

42 Q. CAN YOU DESCRIBE IN GREATER DETAIL THE MANNER IN WHICH
43 INITIATIVE 423 WOULD OPERATE TO LIMIT STATE APPROPRIATIONS?
44

45 A. Initiative 423 is a proposed limitation on the appropriations authority of the Nebraska
46 Legislature. Annual growth of appropriations will generally be constrained by a factor

1 based upon state population growth and inflation. The constraint it proposes would apply
2 to all areas of appropriations made by the Legislature beginning with any state fiscal year
3 that commences after January 1, 2007. Accordingly, the current state fiscal year,
4 FY2006-2007, would be the base or beginning year for purposes of complying with
5 Initiative 423.

6
7 Q. DOES INITIAITVE 423 CONTAIN ANY EXCEPTIONS TO THE REQUIREMENT
8 THAT STATE APPROPRIATIONS SHALL BE LIMITED TO A FACTOR BASED
9 UPON INFLATION AND POPULATION GROWTH?

10
11 A. Yes it does. There is a provision in the initiative that states that the legislature may
12 propose to the voters for their approval a state budget that exceeds the limitation placed
13 upon the Legislature. Another exception is a legislative appropriation made pursuant to
14 an emergency declared by three-fourths of the members of the Legislature. An
15 "emergency" is described as an unexpected, immediate, and significant threat to public
16 health and safety. A shortfall in anticipated revenue is not a stated basis for the
17 declaration of a legislative emergency. Finally, Initiative 423 lists a number of revenue
18 sources that, when appropriated, such amounts shall not be included for purposes of
19 calculating the overall limitation upon state appropriation authority. Those revenue
20 sources include: awards of federal funds; awards or donations from non-governmental
21 entities; pro-rata taxpayer relief or refunds; proceeds from the sale of property to non-
22 governmental entities; income earned upon endowments, trust funds, deferred
23 compensation funds, or pension funds; or "appropriations funded by user charges or fees
24 to the extent that such charges or fees do not exceed the approximate cost to the state of
25 providing such goods or services, and the purchase by the user is wholly discretionary".
26

27 Q. IS THERE ANYTHING ELSE REGARDING INITIATIVE 423 THAT YOU BELIEVE
28 IMPORTANT TO ITS CONSIDERATION IN CONNECTION WITH THIS HEARING
29 TODAY?

30
31 A. I would note that in attempting to construe Initiative 423 that Section 6 provides as
32 follows: "It is the intent of the voters in amending this section that legal interpretations
33 that restrain growth in government spending are favored over interpretations that do not
34 restrain such spending."
35

36 Q. WOULD THE ADOPTION OF INITIATIVE 423 RESULT IN ANY IMMEDIATE
37 CONSEQUENCES TO THE ABILITY OF THE LEGISLATURE TO APPROPRIATE
38 FUNDS?

39
40 A. According to a review of Initiative 423 undertaken by the Nebraska Legislative Fiscal
41 Office, the petition was analyzed to determine the impact to state General Fund
42 appropriations had the provisions of Initiative 423 been in place since the 1996-97 fiscal
43 year. The Legislative Fiscal Office analysis indicates that over the course of the ten-year
44 period total General Fund appropriations increased 5.4%. Using the Initiative 423
45 calculation for population growth and inflation, the same ten-year period resulted in a
46 growth factor at the low end of 1.7% and 4.1% at the high end. Overall, the average

allowable growth rate for appropriations averaged 3.0%. The Legislative Fiscal Office analysis concludes that had Initiative 423 been in place the previous ten-year period of General Fund appropriations would be \$643,294,093 less than was actually appropriated by the Legislature. In the current biennium for example, total General Fund appropriations for FY 2005-2006 increased at a 7.8% rate. The Initiative 423 calculated limitation would have been 3.0%. For the current fiscal year, FY 2006-2007, total General Fund appropriations increased at a 7.0% rate, while the Initiative 423 calculated limitation would have been 3.8%.

Q. DOES THE LEGISLATIVE FISCAL OFFICE ANALYSIS LOOK AT OTHER STATE FUNDS SUCH AS CASH FUND ACCOUNTS-SPECIFICALLY THE NTUSF?

A. No, the analysis undertaken by the Legislative Fiscal Office only examines the impact to the state General Fund, not to Cash Funds, such as the NTUSF. However, the constraints proposed by Initiative 423 apply to "every legislative appropriation authorizing an expenditure of funds from the state treasury within a specific fiscal year". The NTUSF is specifically appropriated by the Legislature each year and funds are administered through the state treasury. I believe one can state that unless excepted by the language of Initiative 423, the spending authority appropriated to the NTUSF by the Legislature is a part of the overall "universe" of spending overseen by the Legislature and is subject to an annual rate of growth that may not exceed population growth and inflation should Initiative 423 be enacted by the voters.

Q. DOES INITIATIVE 423 IN ANY WAY LIMIT THE AUTHORITY OF THE COMMISSION TO ADJUST THE NUSF SURCHARGE?

A. No, Initiative 423 is a limitation on annual total appropriations that may be enacted by the Legislature. It does not constrain or limit the ability of the Legislature in any manner to raise revenue. Likewise, there is no language in the Initiative that constrains the authority delegated to the Commission by the Legislature in section 86-328 to set the surcharge at a level that is necessary to carry out the purposes of the NTUSF. What Initiative 423 does constrain is the authority of the Legislature to *appropriate* funds. If enacted, Initiative 423 would require the Legislature to prioritize constitutionally limited appropriations authority between all categories of state appropriations that fail to have a specific Initiative 423 excluded revenue source.

IV. THE PRUDENT COURSE OF ACTION FOR THE COMMISSION.

Q. WOULD THE ENACTMENT OF INITIATIVE 423 DIRECTLY IMPAIR THE ABILITY OF THE COMMISSION TO ADMINISTER THE NTUSF?

A. Not directly. The NTUSF is in no way changed or altered by the plain language of the Initiative. However, unless there is a determination made that the NTUSF is exempt from the constraints imposed by Initiative 423, then the spending authority that the Commission is appropriated each fiscal year for carrying out the purposes of the NTUSF *is* at risk. Under the paradigm proposed by Initiative 423, to the extent that total

1 appropriation *needs* identified by the Legislature (determined by all categories of state
2 appropriations not specifically excluded from the initiative) exceed the total
3 appropriations *capability* available to the Legislature (determined by the limitation of the
4 population growth/inflation factor) then all state programs will be placed into
5 competition with each other for limited appropriations authority. To the extent there are
6 state appropriated programs that historically exhibit growth rates in excess of the rate that
7 Initiative 423 will prescribe, the Legislature will have one of two options: (a) Reduce the
8 appropriations for all programs to a rate that is consistent with the Initiative 423 growth
9 factor; or (b) begin the process of eliminating appropriations authority for other state
10 appropriated programs. For example, the analysis undertaken by the Legislative Fiscal
11 Office suggested that one method of addressing the \$643 million difference in actual
12 General Fund appropriations versus the appropriation authority available had Initiative
13 423 been operative for the past ten years would be to freeze or reduce state aid to local
14 government.

15
16 Q. WHAT IS THE CURRENT FISCAL YEAR 2006-2007 CASH FUND
17 APPROPRIATION FOR THE NTUSF?

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19 A. According to the biennium budget bill, LB 425, passed in 2005 and amended by LB
20 1060 this past legislative session, the fiscal year 2006-2007 Cash Fund appropriation
21 for the NTUSF is \$82,671,863. Of that amount, \$82,000,000 is designated as state aid
22 and is restricted to that specific purpose. This current level of appropriations for the
23 Cash Fund is particularly significant because should Initiative 423 be adopted, the FY
24 2006-2007 appropriation represents the "base year" for purposes of calculating
25 Initiative 423-limited appropriations authority in future budget years.

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27 Q. CAN YOU IDENTIFY ANY CONCERNS THAT THE COMMISSION SHOULD
28 HAVE REGARDING INITIAITVE 423 AND THE PROPOSAL CURRENTLY
29 PENDING TO REDUCE NUSF SUPPORT BY \$23.4 MILLION PER YEAR?

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31 A. Yes, I have a significant concern to the extent that the NTUSF may be determined to be
32 subject to the limitations proposed by Initiative 423. For the Commission to reduce the
33 amount of distributed support by 34.3% in the base year for determining Initiative 423-
34 based appropriations limitations could result in the inability for the NTUSF to ever return
35 to the level of appropriations authority that exists and is needed today. To the extent that
36 the Commission possesses appropriation authority for FY 2006-2007 of \$82,000,000,
37 and should total support distributed during calendar year 2007 to be less than
38 \$50,000,000, I believe there should be concern that given the constraints of the Initiative
39 423 proposal, the Legislature would reduced the current authorized level of
40 appropriations authority for the NTUSF to a level that more closely mirrors actual
41 support distribution levels. In effect, because of the timing of Initiative 423 and this
42 docket, the NTUSF would be permanently sized, in all likelihood, at the level of support
43 distribution that is determined in this proceeding. In future years the Commission may
44 decide there is a need to increase the level of support provided from the NTUSF. The
45 ability to provide such support may be entirely contingent upon the ability of the

1 Commission to first secure from the Legislature Initiative 423-limited appropriations
2 authority that will likely first need to be taken from another agency or program.
3

4 Q. DO YOU HAVE ANY RECOMMENDATIONS FOR THE COMMISSION
5 REGARDING THIS DOCKET?
6

7 A. Yes I do. I think that it is generally agreed to that the adoption of the Initiative 423
8 proposal to the Nebraska Constitution will fundamentally alter the budget and
9 appropriations process in Nebraska, particularly in regard to the manner in which cash
10 funded programs are viewed. Because Initiative 423 only operates as a constraint upon
11 the state appropriations process, one of the immediate ramifications of the Initiative may
12 be to the manner in which the Legislature appropriates state aid, which for appropriations
13 purposes is the manner by which the NTUSF is categorized. Prior to making any
14 reduction in the amount of support distributed from the NTUSF, I would strongly
15 encourage the Commission to first thoroughly evaluate and understand the constraints
16 and implications of Initiative 423 upon the Legislature, the Commission, and the
17 NTUSF.
18

19 Q. Does this conclude your testimony?
20

21 A. Yes, it does.